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1.1 INTRODUCTION

The first chapter of this Draft Environmental Impact Statement describes the background and purpose for a new sustainable forestry calculation for forested trust lands managed by the Washington State Department of Natural Resources in western Washington. Included are the legal and regulatory framework surrounding the sustainable forest management of trust lands and the significant issues that have been identified relating to establishment of a sustainable harvest level for the next decade. The chapter concludes with a discussion of the final decision to be made.

1.2 BACKGROUND

1.2.1 Washington State Department of Natural Resources as a Land Manager

The Department of Natural Resources (DNR) was established in 1957 with the consolidation of at least ten agencies, boards, and commissions to serve, in part, as a land steward for a variety of state-owned lands, which include various trust lands, aquatic lands, and natural areas. In its role as a land steward, DNR manages approximately 2.1 million acres of forestlands, 2 million acres of aquatic lands (primarily tidelands and bedlands), and 1 million acres of range, agricultural, and urban land (DNR 1992). Other agency



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responsibilities include managing Natural Area Preserves and Natural Resource Conservation Areas, fighting wildfires, and regulating forest practices on all non-federal lands in the state.

DNR has a diverse staff of foresters, engineers, geologists, biologists, cartographers, hydrologists, soils scientists, and economists—just to mention a few—who protect and manage lands and natural resources for long-term productivity, habitat, and other conservation, education, and recreation benefits.

The Board of Natural Resources is charged with the oversight and the approval of major policies for state trust lands and resources. The Board is composed of six members: the Commissioner of Public Lands; the Governor (or a designated representative); the State Superintendent of Public Instruction; the Dean of the College of Agriculture, Washington State University; the Dean of the College of Forest Resources, University of Washington; and an elected representative from a county that contains Forest Board trust land. By statute, the Board of Natural Resources is part of the Department of Natural Resources (former Revised Code of Washington [RCW] 43.30.030, recodified at Laws of 2003, Ch. 334, sec. 128).

Management of state trust forestlands is conducted within the framework of state and federal laws, DNR Forest Resource Plan, DNR's 1997 Habitat Conservation Plan (HCP), the 2001 Washington State Forest Practices Rules (which establish legal requirements for forest management on all non-federal lands in the state), the state constitution and Enabling Act, and with oversight and policy direction provided by the Board of Natural Resources.

The Forest Resource Plan was developed to guide the management of 2.1 million acres of state forested trust land, and describes DNR's guiding policies and management priorities. The plan contains 40 policies and associated discussions guiding the management of DNR-managed forestlands. In 2002, the Board of Natural Resources extended the Forest Resource Plan until June 2005 to allow for the examination of sustainable forestry options and calculation of the sustainable harvest level for western Washington.

DNR manages all westside trust forestlands according to a Habitat Conservation Plan agreement with the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration – Fisheries Service (or National Marine Fisheries Service) (collectively referred to as “the Federal Services”). The Habitat Conservation Plan is a multi-species land management plan that takes a multi-species and landscape approach to managing for conservation of threatened and endangered species. It therefore allows DNR to manage under a landscape approach. The plan protects all currently listed and potential future listed species, and manages for species populations, not individual plants or animals.

The Habitat Conservation Plan covers approximately 1.6 million acres of state lands managed by DNR within the range of the northern spotted owl. The plan provides DNR assurance that forest management activities will be able to continue while providing for threatened and endangered species conservation at landscape levels. DNR's conservation is designed to supplement federal land management protections at landscape levels (DNR 1997). The plan also provides DNR with a federal permit for incidental “taking” of species



listed under the federal Endangered Species Act (16 U.S.C. 1531 et seq.). The “take” provision is in exchange for implementing forest management practices designed to conserve threatened and endangered species and their habitats for the long term.

DNR has a set of departmental procedures, tasks, and guidelines that direct and guide the operational management of forested trust lands. These procedures, tasks, and guidelines implement directives provided in the Forest Resource Plan, Habitat Conservation Plan, Forest Practices Rules, and additional operational management strategies for DNR-managed forestlands.

1.2.2 Trust Duties

DNR has unique obligations in managing the lands covered by the Forest Resource Plan and Habitat Conservation Plan because they are trust lands. Congress, through the Enabling Act, granted the majority of these lands when Washington became a state in 1889. The federally granted lands are to provide financial support to specific designated beneficiaries, in perpetuity. The beneficiaries include state institutions such as public schools, state universities, and charitable, educational, penal, and reformatory institutions.

During the 1920s and 1930s the state purchased cutover forestlands and received title to cutover or abandoned forestlands from counties due to tax foreclosures. The legislature has directed that the “state forest lands” (see Laws of 2003, Ch. 334, sec. 301) be held in trust and administered and protected by DNR, as are other federally granted trust forestlands. The “state forest lands” are commonly known as “Forest Board lands,” and are located in 17 western Washington counties. These lands are managed to help fund state schools and county services in the counties where they are located.

Out of the roughly 3 million acres currently managed for these trusts, about 2.1 million acres are forested. Of these, about 1.4 million acres are west of the Cascade Crest (see Map 1).

1.2.2.1 Trust

A trust is a relationship in which one person, the trustee, holds title to property which one must keep or use for the benefit of another (Bogert 1987). The relationship between the trustee and the beneficiary for these lands is a fiduciary relationship. A trust includes a grantor (the entity establishing the trust), a trustee (the entity holding the title), one or more beneficiaries (entities receiving the benefits from the assets), and trust assets (the property kept or used for the benefit of the beneficiaries). In the case of Washington’s trust responsibility, the trust assets are the trust lands, funds in certain dedicated accounts, and the permanent funds associated with them.

With the state as trustee, the legislature has designated DNR as manager of the federally granted trust and state forest lands. Statutorily, DNR consists of the Board of Natural Resources, the Commissioner of Public Lands as administrator, and the Department Supervisor (formerly RCW 43.30.030, recodified at Laws of 2003, Ch. 334, sec. 128). The Board of Natural Resources is required, by statute, to establish “policies to insure that the acquisition, management and disposition of lands and resources within the Department’s



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jurisdiction are based on sound principles designed to achieve the maximum effective development and use of such lands and resources consistent with laws applicable thereto” (formerly RCW 43.30.150, recodified at Laws of 2003, Ch. 334, sec. 128).

As a trust manager, DNR follows the common law duties of a trustee, which include administering the trust in accordance with the provisions that created it; maintaining undivided loyalty to each of the trusts and its beneficiaries; managing trust assets prudently; making the trust property productive while recognizing the perpetual nature of the trusts; dealing impartially with beneficiaries; and reducing the risk of loss to the trusts. DNR must also comply with all laws of general applicability.

In 1984, the Washington State Supreme Court specifically addressed the state trust relationship in County of Skamania v. State of Washington, 102 Wn.2d 127, 685 P.2d 576. The Skamania decision explicitly addresses two of a trustee’s duties. The Supreme Court found that a trustee must act with undivided loyalty to the trust beneficiaries, to the exclusion of all other interests, and manage trust assets prudently. The Court also cited a series of cases in which private trust principles were applied to land grant trusts. While all but one of these cases are from other states with differently worded Enabling Acts, they generally indicate that a state’s duty is to strive to obtain the most substantial financial support possible from the trust property while exercising ordinary prudence and taking necessary precautions for the preservation of the trust estate. This principle has often been generally referred to as the trust mandate. The 1992 Forest Resource Plan contains a succinct discussion of the trust mandate and the common law duties of a trustee as interpreted by DNR and approved by the Board.

In short, any management action taken on the state’s trust lands, including this examination of sustainable forestry options and setting of a harvest level, should be consistent with the principles of trust management. It is important to retain the long-term capacity of the forest, recognizing that near-term actions can create long-term ecological, social, and economic benefits.

The following excerpt from the Forest Resource Plan’s (1992) discussion of DNR’s interpretation of a trust manager’s duty as a prudent person helps to explain how this calculation ties to trust management obligations:

The Prudent Person Doctrine

Trust managers are legally required to manage a trust as a prudent person, exercising such care and skill as a person of ordinary prudence would exercise in dealing with his or her own property. In the Department’s view, this means, among other things, avoiding undue risk, avoiding tortious acts, etc.

The Department believes it is in the best interests of the trust beneficiaries over the long run to:

Manage state forestland to prevent the listing of additional species as threatened or endangered.



Prevent public demand for ever-increasing, restrictive regulations of forest practices.

Avoid the resulting contract disputes and uncertainty.

That is why the Department has, in certain policies, retained the freedom to exceed existing Forest Practices Act regulations if necessary to protect a public resource on forestland (DNR Forest Resource Plan, Appendix B).

1.2.2.2 Revenue to Beneficiaries

Since 1970, DNR-managed trust lands have benefited all the people of Washington by producing more than \$4.55 billion in trust revenue, thereby reducing the need for taxes to pay for the state's public projects and services. State trust lands are managed to produce income to build public schools, Capitol buildings, universities, prisons, state mental hospitals, and community colleges. They also help fund local services in many counties, as well as the state general fund.

1.2.3 Legislative Directive

State law (formerly RCW 79.68, recodified at Laws of 2003, Ch. 334, sec. 555(3)) directs DNR to apply "sustained yield" management of state trust forestlands. The law requires DNR to periodically adjust acreages designated for inclusion in the sustained yield management program, and calculate a sustainable harvest level.

The "sustainable harvest level" means the volume of timber to be scheduled for sale from state-owned lands during a planning decade. This is part of DNR's strategic plan for sustainable forest management. It provides for sustainable harvesting on a continuing basis without major prolonged curtailment or cessation of harvest.

DNR also has the obligation to provide for other public uses of trust lands when the uses are compatible with the obligations of trust management discussed above. Public uses that may be compatible with trust management activities could include recreational areas, recreational trails for both vehicular and non-vehicular uses, special educational or scientific studies, research and experimental programs managed by various public agencies, special events; hunting and fishing and other sports activities, maintenance of scenic areas, maintenance of historical sites, municipal or other public watershed protection, greenbelt areas, public rights-of-way, and other uses or activities by public agencies (formerly RCW 79.68.050, recodified at Laws of 2003, Ch. 334, sec. 555(2)).

1.3 REGULATORY FRAMEWORK

1.3.1 State Forest Practices Act

In 1974, the Washington state legislature enacted an expanded Forest Practices Act, Chapter 76.09 of the Revised Code of Washington. The Act established rules to protect the state's public natural resources while maintaining a viable timber industry (RCW 76.09.010). The Act regulates activities related to growing and harvesting timber on all non-federal forestlands in the state, including DNR-managed trust lands.



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The Forest Practices Board was established by the State Legislature under the 1974 Forest Practices Act. The Forest Practices Rules, Washington Administrative Code 222, give direction on how to implement the Forest Practices Act.

In 1999, the Washington State Legislature encouraged the Forest Practices Board to adopt new rules consistent with the April 1999 Forests and Fish Report (RCW 76.09.055). In response, the Washington Forest Practices Board amended the Forest Practices Rules in July 2001. The objectives are to protect public resources; the focus is on water quality, salmon habitat, and other aquatic and riparian resources.

It is important to note that the Forest Practices Division that enforces the Forest Practices Act and Forest Practices Rules is completely independent of the state land management divisions of DNR, which manage state trust lands. Management activities on trust forestlands are subject to the same Forest Practices Rules as those on local public and private forestland.

1.3.2 Federal Endangered Species Act

The purposes of the Endangered Species Act are to protect the ecosystems upon which threatened and endangered species depend, to provide a program for the conservation of populations of threatened and endangered species, and to take such steps as may be appropriate to achieve the purposes of the Act (16 U.S.C. 1531 et seq.).

Section 10 of the Endangered Species Act (16 U.S.C. 1539) authorizes a landowner to negotiate a habitat conservation plan with the Secretary of the Interior to minimize and mitigate any incidental impact to threatened and endangered species while conducting lawful activities such as forest practices. A habitat conservation plan allows the landowner to manage for endangered species at a landscape level, rather than protecting only the individual sites at which the species is found. A habitat conservation plan is intended to offset any harm that may be caused to individual animals by focusing on building, over time, viable population levels of the species. As long as the landowner manages within the limits of the habitat conservation plan, the landowner will not be prosecuted for “take” of an individual animal should its habitat be disturbed during lawful activities. The permit issued to DNR by the federal government is referred to as an “incidental take permit,” and sets the limits for activities allowed under the Habitat Conservation Plan (DNR 1997).

In 1997, DNR and the federal services signed a multi-species Habitat Conservation Plan to address state trust land management compliance with the federal Endangered Species Act. The plan covers approximately 1.6 million acres of state trust lands managed by DNR within the range of the northern spotted owl.

1.3.3 Other Laws

DNR complies with all other applicable state and federal laws. They include such laws as the Shoreline Management Act, which is intended to protect valuable shoreline resources, and the Clean Water Act, which establishes the basic structure for regulating discharges of



pollutants into the waters of the United States. The Clean Air Act, State Environmental Policy Act, and certain local laws also affect the management of DNR's forested land base.

1.4 NEED AND PURPOSE

1.4.1 Need

This proposal is to evaluate options for long-term sustainable forest management and recalculate a sustainable harvest level. State law requires DNR to periodically adjust the acreages designated for inclusion in the sustained yield management program and calculate a sustainable harvest level.

DNR manages approximately 1.4 million acres of forestland in western Washington. DNR has a duty to produce a perpetual source of income for the trust beneficiaries. Consistent with its fiduciary duties, DNR uses best forest management principles in its stewardship of these lands.

DNR recalculates timber harvest volumes with the goal of producing sustainable relatively even-flow harvest volumes over time. This ensures that harvests can be sustained into the future to meet the needs of today's beneficiaries as well as all future generations of trust beneficiaries.

Improvements in DNR forest inventory data, a 2001 Forest Practices Rules update, and several years of land management under the 1997 Habitat Conservation Plan collectively warrant a review of the suite of applicable policies, procedures, and management strategies currently in place on western Washington state trust forestlands to establish the sustainable harvest level.

1.4.2 Purpose

The purposes of the recalculation proposal are:

- 1. To incorporate new information into a new model to recalculate the decadal sustainable timber harvest level (for western Washington) under current DNR policy, federal and state laws; and**
- 2. To permit the Board of Natural Resources to evaluate any policy changes after a number of policy alternatives have been modeled and analyzed through an Environmental Impact Statement.**

As a result of examining different sustainable forestry management options, the Board of Natural Resources and DNR recognize the potential need to change some Forest Resource Plan policies and some DNR policies, procedures, and tasks.

This sustainable forest management project utilizes a spatial computer model to recalculate a 10-year sustainable harvest level for DNR-managed forests in western Washington. The result is a robust analysis of forest landscapes for the following:

- conservation benefits;



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- growing and harvesting scenarios;
- fish and wildlife habitat;
- economic benefits; and
- other information to assist Board of Natural Resources policy decisions.

At the January 2002 Board meeting, prior to the release of the State Environmental Policy Act determination of Significance and Public Scoping Notice, the Board set the criteria for evaluating policy alternatives. The Board specified that alternatives and components of alternatives were to meet the Department's legal and policy mandates, including federal and state laws, the Trust Mandate, and the objectives of the Habitat Conservation Plan. Alternatives that did not meet one or more of these objectives or the purpose and need were not evaluated within this process.

1.5 SCOPING AND SIGNIFICANT ISSUES

1.5.1 Scoping

Scoping is the first formal step in preparing an Environmental Impact Statement under the State Environmental Policy Act. Scoping is intended to initiate public involvement in the process, and is conducted to fulfill a three-fold purpose:

1. Narrow the focus of the Environmental Impact Statement to significant environmental issues;
2. Eliminate issues that would have insignificant impacts, or that are not directly related to the proposal; and
3. Help identify reasonable alternatives to be analyzed in the Environmental Impact Statement.

The scoping process alerts the public, the project proponent, as well as the lead agency to areas of concern and controversy early in the process. Here, DNR is both the project proponent and the lead agency.

The State Environmental Policy Act process was formally initiated with the scoping notice released on February 22, 2002 that was followed with a series of six public meetings held between March 6 and 21, 2002 in Seattle, Sedro Woolley, Ellensburg, Port Angeles, Longview, and Lacey.

More than 300 people attended six public meetings. During the public meetings, DNR extended the offer of additional meetings to stakeholder groups who were interested in the technical and policy details behind the development of the sustainable harvest calculation. The offer resulted in ten additional informal meetings with 26 organizations.

In addition to these meetings, DNR received 410 written comment letters. In all, about 2,000 individual comments were received regarding the sustainable harvest calculation.



1.5.2 Significant Issues

The State Environmental Policy Act requires an Environmental Impact Statement to analyze significant **environmental** impacts (Washington Administrative Code 197-11-440 and 448). Issues that are not significant do not need to be analyzed. The intent is that the responsible agency will weigh the Environmental Impact Statement as one of several pieces of information needed in the decision-making process. The focus of this document is to compare a reasonable range of sustainable forest management alternatives and to assess their probable significant adverse environmental impacts. The analysis is based on reasonably available information (Washington Administrative Code 197-11-080).

The 2,000 public and stakeholder comments captured diverse issues, ideas, and opinions proposed by the public and stakeholders during the scoping process. Comments were summarized and responses provided in a document completed in August 2002 titled, “2003 Calculation of the Sustainable Harvest for DNR-managed Forests in Western Washington: Environmental Impact Statement Scoping Summary and Responses to Public Comments received during the Scoping Process” (see Appendix A).

The comments were summarized by subject, and were examined to determine if the issues were germane to sustainable forestry and the sustainable harvest calculation for state DNR-managed forests in western Washington.

The comments received led DNR to develop four questions that highlight the broad policy issues for the Board of Natural Resources.

1. How should DNR manage for biological conservation?
2. How intensively should DNR manage trust land forests?
3. How should harvest levels be organized? (For instance, as a whole, by trust, by ownership group, as currently defined in the DNR Forest Resource Plan, etc.)
4. How much older forest is desirable on westside DNR-managed trust lands?

These four questions helped DNR staff and Board of Natural Resources members identify issues for consideration in developing the sustainable forestry analyses.

1.5.3 State Environmental Policy Act Non-Project Proposal

The sustainable forestry calculation is a “non-project action” under the State Environmental Policy Act. Non-project actions include the adoption of plans, policies, programs, or regulations that contain standards controlling the use of the environment or that will regulate future actions. Such actions are not site-specific in nature and therefore do not warrant site-specific environmental analyses (Washington Administrative Code 197-11-774). Future management decisions on the forested trust lands will depend in part on the decisions made during this process.

1.5.4 Alternatives Considered

In addition to providing an impartial discussion of potentially significant negative environmental impacts, an Environmental Impact Statement identifies reasonable



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alternatives and mitigation measures to avoid or minimize adverse environmental impacts. An Environmental Impact Statement evaluates the proposal (known as the “preferred alternative”), the no-action alternative, and other “reasonable alternatives.” A reasonable alternative is an action that could feasibly attain or approximate the proposal’s objectives, but at a lower environmental cost or decreased level of environmental impacts (environmental impact statement 197-11-440(5)(b)). Reasonable alternatives may be limited to those that an agency with jurisdiction has authority to control either directly or indirectly through mitigation.

Alternatives are one of the basic building blocks of an Environmental Impact Statement. They present options in a meaningful way for decision-makers. Policy changes being considered by the Board of Natural Resources are reflected in six reasonable Alternatives described in detail in Chapter 2 of this document. The Board of Natural Resources is responsible for making decisions on policy direction while DNR makes decisions on how to implement policies through a series of procedures. The Alternatives in this document represent different choices in both policy and procedure. They incorporate information gathered and issues raised through the project scoping process, forest modeling, and Board of Natural Resources discussion.

This draft Environmental Impact Statement is prepared without a preferred Alternative to provide a wider range of choices for the Board of Natural Resources prior to making a final decision. The preferred Alternative will be identified and evaluated in the Final Environmental Impact Statement.

1.6 FINAL DECISIONS TO BE MADE

The Final Environmental Impact Statement will provide part of the information that the Board of Natural Resources will use, along with other information, in setting a new sustainable harvest level (according to former RCW 79.68.040 [recodified at Laws of 2003, Ch. 334, sec. 555(3)]). The land management strategies of the preferred Alternative represent prospective changes to DNR policies (set by the Board of Natural Resources), procedures, and operational management (set administratively by DNR). The preferred Alternative will be part of the Final Environmental Impact Statement that, when approved by the Board of Natural Resources, may expressly change some current policies. Any policies that are changed will be implemented through the Board’s adoption of the Final Environmental Impact Statement Alternative. Concurrently, with the Board’s approval of the document, DNR’s policies, procedures, and tasks will be adjusted to reflect those included in the approved Final Environmental Impact Statement Alternative. The Board of Natural Resources will adopt their preferred option by using the following information:

- Public comments on the Draft Environmental Impact Statement;
- Final Environmental Impact Statement;
- Additional analyses provided by DNR staff at Board of Natural Resources request; and
- Public comments offered at regular monthly Board of Natural Resources meetings.